

IC 21-9-4

Chapter 4. Authority Board of Directors and Officers

IC 21-9-4-1

Board of directors; members; vacancy; chairman; removal

Sec. 1. (a) The board of directors of the authority is established. The board consists of the following:

- (1) The following four (4) ex officio members or directors:
 - (A) The treasurer of state.
 - (B) The state superintendent of public instruction.
 - (C) The Indiana commissioner of higher education.
 - (D) The budget director.
 - (2) Five (5) appointed members or directors who:
 - (A) are appointed by the governor; and
 - (B) have knowledge, skill, and experience in academic, business, financial, or education fields.
- (b) During a member's term of service on the board, an appointed member of the board may not be an official or employee of the state.
- (c) Not more than three (3) of the appointed members of the board may belong to the same political party.
- (d) An appointed member serves a four (4) year term. An appointed member shall hold over after the expiration of the member's term until the member's successor is appointed and qualified.
- (e) The governor may reappoint an appointed member of the board.
- (f) A vacancy shall be filled for the balance of an unexpired term in the same manner as the original appointment.
- (g) The treasurer of state shall serve as chairman of the board. The board shall annually elect one (1) of its ex officio members as vice chairman, and may elect any other officer that the board desires.
- (h) The governor may remove an appointed member for misfeasance, malfeasance, willful neglect of duty, or other cause after notice and a public hearing, unless the member expressly waives the notice and hearing in writing.
- As added by P.L.165-1996, SEC.1.*

IC 21-9-4-2

Salary; reimbursement

Sec. 2. (a) An appointed member of the board is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Each appointed member is, however, entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

(b) An ex officio member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

As added by P.L.165-1996, SEC.1.

IC 21-9-4-3

Designation of ex officio member

Sec. 3. An ex officio member of the board may designate a person to serve as an ex officio member of the board in the absence of the ex officio member.

As added by P.L.165-1996, SEC.1.

IC 21-9-4-4**Power of board to employ manager and delegate functions**

Sec. 4. The board may:

- (1) employ a manager, who is not a member of the board; and
- (2) delegate necessary and appropriate functions and authority to the manager.

As added by P.L.165-1996, SEC.1.

IC 21-9-4-5**Quorum; presence at meetings; authority to act; meetings**

Sec. 5. (a) Five (5) members of the board are a quorum for:

- (1) the transaction of business at a meeting of the board; or
- (2) the exercise of a power or function of the authority.

(b) This subsection applies to a meeting of the board at which at least five (5) members of the board are physically present at the place where the meeting is conducted. A member of the board may participate in a meeting of the board by using a means of communication that permits:

- (1) the member;
- (2) all other members participating in the meeting; and
- (3) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting. A member who participates in a meeting described in this subsection is considered to be present at the meeting. If a meeting is held under this subsection, the memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of each member who was physically present at the place where the meeting was conducted, who participated in the meeting by using a means of communication described in this subsection, and who was absent from the meeting.

(c) The affirmative vote of a majority of all the members of the board who are present is necessary for the authority to take action. A vacancy in the membership of the board does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. An action taken by the board under this article may be authorized by:

- (1) resolution at any regular or special meeting; or
- (2) unanimous consent of all the members who have not abstained.

A resolution takes effect immediately upon adoption and need not be published or posted.

(d) The board shall meet at the call of the chairman and as provided in the bylaws of the authority.

(e) Meetings of the board may be held anywhere in Indiana.

As added by P.L.165-1996, SEC.1.

IC 21-9-4-6

Authority as public agency; board as governing body

Sec. 6. (a) The authority is a public agency for purposes of IC 5-14-1.5 and IC 5-14-3.

(b) The board is a governing body for purposes of IC 5-14-1.5.

As added by P.L.165-1996, SEC.1.

IC 21-9-4-7

Powers of board

Sec. 7. In addition to any power granted by this article, the board has all powers necessary or convenient to carry out and effectuate the purposes and objectives of this article, the purposes and objectives of the education savings programs, and the powers delegated by law or executive order, including the following powers:

(1) To develop and implement the education savings programs and, notwithstanding any provision in this article to the contrary, other services consistent with the purposes and objectives of this article, through:

(A) rules or emergency rules adopted under IC 4-22-2; or

(B) rules, guidelines, procedures, or policies established by the board and approved by the higher education commission.

(2) To conform the education savings programs and, notwithstanding any provision in this article to the contrary, services consistent with the purposes and objectives of this article, to the requirements of a qualified state tuition program set forth in Section 529 of the Internal Revenue Code and all applicable federal regulations, through:

(A) rules or emergency rules adopted under IC 4-22-2; or

(B) guidelines, procedures, or policies established by the board.

(3) To retain professional services, including the following:

(A) Financial advisers and managers.

(B) Custodians and other fiduciaries.

(C) Investment advisers and managers.

(D) Accountants and auditors.

(E) Consultants or other experts.

(F) Actuarial services providers.

(G) Attorneys.

(4) To establish minimum account deposit amounts (both initial and periodic).

(5) To employ persons, if the board chooses, and as may be necessary, and to fix the terms of their employment.

(6) To recommend legislation to the governor and general assembly.

(7) To apply for designation as a tax exempt entity under the Internal Revenue Code.

(8) To adopt such rules, bylaws, procedures, guidelines, and policies as are necessary to carry out the education savings

programs and services and the authority's management and operations.

(9) To sue and be sued.

(10) To provide or facilitate provision of benefits and incentives for the benefit of qualified beneficiaries, account owners, contributors, or account beneficiaries as the board's resources allow or as are directed or provided for by the general assembly.

(11) To conform the education savings programs to federal tax advantages or incentives, as in existence periodically, to the extent consistent with the purposes and objectives of this article.

(12) To interpret, in rules, policies, guidelines, and procedures, the provisions of this article broadly in light of the purposes and objectives of this article.

(13) To charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction under an education savings program or services.

(14) To have perpetual succession.

As added by P.L.165-1996, SEC.1. Amended by P.L.25-1999, SEC.8; P.L.135-2002, SEC.18.

IC 21-9-4-8

Annual report by authority

Sec. 8. The authority shall prepare an annual report for the education savings programs and services and promptly transmit the annual report to the governor and the general assembly. The authority shall make available, upon request, copies of the annual report to qualified beneficiaries, account owners, and the public. A report transmitted under this section to the general assembly must be in an electronic format under IC 5-14-6.

As added by P.L.165-1996, SEC.1. Amended by P.L.135-2002, SEC.19; P.L.28-2004, SEC.157.

IC 21-9-4-9

Acceptance of gifts, bequests, donations, and devises by authority

Sec. 9. (a) The authority may accept gifts, bequests, donations, and devises of personal and real property:

(1) as trustees for the maintenance, use, or benefit of the authority, the education savings programs, or the endowment fund; or

(2) to be administered for other public or charitable purposes for the benefit or use of account owners or account beneficiaries.

(b) The authority may receive, accept, hold, administer, and use any property transferred to the authority by gift, bequest, donation, or devise in accordance with the terms, conditions, obligations, liabilities, and burdens imposed on the gift, bequest, donation, or devise if, in the judgment of the board, the action is in the best interest of the authority, the education savings programs, the endowment fund, account owners, contributors, or account

beneficiaries, as applicable.

(c) The authority may accept a gift, devise, donation, or bequest made for the purpose of providing an annuity on conditions consistent with the conditions set forth in IC 20-12-4-2 (relating to boards of trustees of state educational institutions).

(d) The authority may, if not inconsistent with the terms and conditions of a gift of real property:

- (1) sell, convey, or otherwise dispose of the real property; and
- (2) invest, reinvest, or use the proceeds as, in the judgment of the board, is of the greatest benefit to the authority, the education savings programs, the endowment fund, account beneficiaries, and account owners.

(e) When acting under the powers granted by this article and also with respect to the money in the endowment fund and the program account as provided in IC 21-9-5 and IC 21-9-7, the members serve as trustees of private trusts, subject to the terms and conditions of the trust program or the gift, bequest, donation, or devise and law applicable to private trusts.

As added by P.L.165-1996, SEC.1. Amended by P.L.135-2002, SEC.20.

IC 21-9-4-10

Duties of manager of authority

Sec. 10. A manager or another person designated by resolution of the authority:

- (1) shall keep a record of the proceedings of the authority;
- (2) shall be custodian of:
 - (A) all books, documents, and papers filed with the authority; and
 - (B) the minute book or journal of the authority; and
- (3) may copy all minutes and other records and documents of the authority and may give certificates of the authority to the effect that the copies are true copies. A person who deals with the authority may rely upon the certificates.

As added by P.L.165-1996, SEC.1.

IC 21-9-4-11

Surety bond

Sec. 11. Before the adoption and implementation of any education savings program, the:

- (1) chairman;
- (2) vice chairman;
- (3) manager; and
- (4) any officer elected by the authority or member of the authority authorized by resolution to handle funds or sign checks;

shall execute a surety bond in the penal sum of one hundred thousand dollars (\$100,000). The surety bond shall be conditioned upon the faithful performance of the duties of the office of the principal and shall be executed by a surety company authorized to transact

business in Indiana. The authority shall pay the cost of the bonds.
As added by P.L.165-1996, SEC.1.

IC 21-9-4-12

Duties of authority

Sec. 12. The authority shall do the following:

(1) Provide the board and each member, officer, employee, consultant, counsel, and agent of the authority or the board a defense in a suit arising out of the performance of duties for or on behalf of the authority or the board, if the board determines that the duties were performed in good faith.

(2) Save a person described in subdivision (1) or the board harmless from any liability, cost, or damage in connection with an action arising out of the performance of duties for or on behalf of the authority or the board, including the payment of any legal fees, except where the liability, cost, or damage is predicated on, or arises out of, the bad faith of the person or the board, or is based on the person's or board's malfeasance in the performance of duties.

As added by P.L.165-1996, SEC.1.

IC 21-9-4-13

Conflicts of interest

Sec. 13. Notwithstanding any other law, it is not a conflict of interest or violation of any other law for a person to serve as a member of the authority. However, a member shall disclose a conflict of interest relating to actions of the authority as required and in a manner provided by IC 35-44-1-3.

As added by P.L.165-1996, SEC.1.